

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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VALERIE H. COOK,

Plaintiff,

DECISION AND ORDER

11-CV-6446L

v.

ESL FEDERAL CREDIT UNION,

Defendant.

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On December 19, 2012, Magistrate Judge Marian W. Payson issued a Report and Recommendation (“R&R”) recommending that the Court dismiss the complaint in this action for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Dkt. #25). The basis for that recommendation was plaintiff’s failure to comply with court orders, and the lack of any indication from plaintiff that she intends to prosecute this action. *See id.* at 3.

As noted in the R&R itself, any objections to the R&R were due within fourteen days after the relevant party’s receipt of the R&R. Given the presumption that a mailed document is received three days after its filing, *see Tiberio v. Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 37 (2d Cir. 2011), objections to Magistrate Judge Payson’s R&R were due no later than January 7, 2013.

Consistent with her prior pattern of inactivity in this case, plaintiff has filed no objections to the R&R. Based upon my own review of the R&R, I concur with Magistrate Judge Payson’s findings and conclusions, I adopt the R&R in its entirety, and I direct that the complaint be dismissed.

## CONCLUSION

I adopt and accept the Report and Recommendation (Dkt. #25) of United States Magistrate Judge Marian W. Payson in its entirety. The complaint is dismissed for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 14, 2013.